

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1910.

No. 66.

THE UNITED STATES, PLAINTIFF IN ERROR,

VS.

LUCINDA GRIZZARD, WILLIAM GRIZZARD, MRS. LILA
CHANEY, AND WILSON CHANEY.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR
THE EASTERN DISTRICT OF KENTUCKY.

FILED SEPTEMBER 19, 1909.

(21330.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1909.

No. 252.

THE UNITED STATES, PLAINTIFF IN ERROR,

vs.

LUCINDA GRIZZARD, WILLIAM GRIZZARD, MRS. LILA
CHANEY, AND WILSON CHANEY.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR
THE EASTERN DISTRICT OF KENTUCKY.

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THE UNITED STATES OF AMERICA, PLAINTIFF IN ERROR,

vs.

LUCINDA GRIZZARD ET AL., DEFENDANTS IN ERROR.

Writ of error from the Circuit Court of the United States for the Sixth Judicial Circuit and Eastern District of Kentucky, at Richmond, Kentucky, to the Supreme Court of the United States of America.

Honorable, A. M. J. Cochran, district judge. J. H. Tinsley, United States attorney, Covington, Kentucky. W. S. Moberly, attorney for defendants in error.

Proceedings had in the Circuit Court of the United States for the Sixth Judicial Circuit and Eastern District of Kentucky, at a regular term begun and held at Federal Court Hall in the City of Richmond, Kentucky, on Monday, April 27th, A. D. 1908, and of the Independence of the United States of America the 132nd year.

Court met. Present: Honorable A. M. J. Cochran, Judge.

LUCINDA GRIZZARD, WM. GRIZZARD, MRS. LILA CHANEY,
Wilson Chaney, plaintiffs.

vs.

THE UNITED STATES, DEFENDANT.

No. 44.

Be it remembered that heretofore, to wit, on January 31st, A. D. 1905, a petition was filed herein, same being in words and figures as follows, viz:

In the Circuit Court of the United States, Sixth Circuit, and Eastern District of Kentucky.

LUCINDA GRIZZARD, WM. GRIZZARD, MRS. LILA CHANEY,
Wilson Chaney, plaintiffs.

vs.

THE UNITED STATES, DEFENDANT.

No. 44.

To the Honorable judges of the Circuit Court of the United States in and for the Eastern District of Kentucky:

Lucinda Grizzard and Wm. Grizzard, of Madison County Ky., and Lila Chaney, and her husband, Wilson Chaney, of Fayette County, Ky., bring this bill against the United States. And there-upon your orators complain and say that Joseph S. Grizzard departed this life on January, 1902, intestate and the owner in fee simple of the tract of land hereinafter described; that Lucinda Grizzard was his wife and is now his surviving widow, and that he left Wm. Grizzard and Lila Chaney his only children and heirs at

law, and that Wilson Chaney is the husband of Lila Chaney. They say that Lucinda Grizzard as the widow of Joseph S. Grizzard the use of and the benefits accruing from the land herein described as a homestead during her life and at her death it goes in fee simple to Wm. Grizzard and Lila Chaney as the heirs of Joseph S. Grizzard and they say that the parties hereinabove named are now in actual possession of said land, which is situated near Valley View, Madison County, Kentucky, on the waters of Tates Creek, waters of the Kentucky River, and near the mouth of said creek and bounded as follows, to wit:

3 Beginning at a stake in the middle of Tates Creek; thence up the creek in the middle of same to a point where an elm tree formerly stood at the base of a hill; thence an old line and edge of the slack water S. 59 W. 450 ft., S. 42 E. 1,320 ft. to a point on the west side of county road near the ford; thence a new line at the edge of the slack water N. 44 E. 250 ft. to a stake on the north bank of the creek above the house; thence following the edge of the slack water N. 60 W. 184 feet, N. 53 W. 470 feet, N. 16 E. 200 ft., N. 10 W. 530 ft. to a point on the bank of the creek where an elm tree formerly stood; thence down the creek following the base of the hill to the place of beginning, containing 8-8/10 acres by survey and plat herewith filed and made a part hereof.

They say that said land was extremely fertile and productive, and was for many years used for agricultural purposes and was so used by your orators at all times hereinafter complained of. They say that the Kentucky River is a navigable stream, and accessible from the States other than that in which it lies, and, therefore, within the constitutional powers of Congress over navigable waters of the United States; that the Government of the United States, in the lawful exercise of its authority, and pursuant to an act of Congress for the purpose of improving the navigation of said Kentucky River, built and constructed, and on the 15th day of December, 1903, completed a lock and dam eighteen (18) feet high in and across the said Kentucky River just below the village of Valley View in Madison County, Kentucky, and about 1/4 mile below the mouth of Tates Creek in Madison County, Ky.; which lock and dam is known as "Lock and Dam No. 9," in Kentucky River; and that the United States, in the exercise of its authority, and pursuant to an act of Congress as aforesaid, has at all times since the completion of the said lock and dam as aforesaid, maintained said lock and dam, and thereby raised the level of the water of said Kentucky River in its natural channel above its original and normal height 18 feet, causing and forcing the waters in and from the main channel of said river to flood and run back into the channel of Tates Creek, and flow, spread out, cover, stand upon, and permanently flood the lands adjacent to said creek, including the land herein above described belonging to your orators, and thereby rendering the said land wet, boggy, and wholly unfit for agricultural or residence purposes, the purposes for

4 County, Ky.; which lock and dam is known as "Lock and Dam No. 9," in Kentucky River; and that the United States, in the exercise of its authority, and pursuant to an act of Congress as aforesaid, has at all times since the completion of the said lock and dam as aforesaid, maintained said lock and dam, and thereby raised the level of the water of said Kentucky River in its natural channel above its original and normal height 18 feet, causing and forcing the waters in and from the main channel of said river to flood and run back into the channel of Tates Creek, and flow, spread out, cover, stand upon, and permanently flood the lands adjacent to said creek, including the land herein above described belonging to your orators, and thereby rendering the said land wet, boggy, and wholly unfit for agricultural or residence purposes, the purposes for

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which said land had always theretofore been used, and unfit and unsuitable for any purpose whatever known to your orators and of no value whatever to them.

They say that said land, situated as it was and as it had always theretofore been, was worth to your orators the sum of one hundred and fifty (\$150.00) dollars per acre, and that was a reasonable value for same before it was flooded as hereinbefore stated; that by reason of the authority exercised by the United States as aforesaid, in building, operating, and maintaining said lock and dam in and across the Kentucky River, as hereinbefore set out, at the point where same is located and the consequent raising of the level of the water in the main channel of said Kentucky River and in Tates Creek, and causing the same to flow back upon their land and permanently flood said land and render it unfit for use and of no value, they have
5 been thereby wholly deprived of the use of said land for any purpose, and thereby damaged in the sum of \$1,320.00, the value of said land.

For as much as your orators can have no adequate relief except in this court, and to the end therefore that justice may be done between them and the United States, they pray that this honorable court take jurisdiction of this case and that, based upon the law and the facts of the case your honors may adjudge that they recover of the United States the sum of \$1,320.00 and their costs herein expended and for all other proper relief.

JACKSON & ROBERTS,

Attorneys for Lucinda Grizzard and the other Complainants.

UNITED STATES OF AMERICA, *Eastern District of Kentucky, Sct.*

On 31st day of Jan., 1905, before me appeared Wm. Grizzard, one of the complainants above named, who, being duly sworn, deposes and says that he has read the foregoing bill of complaint, and knows the contents thereof, and that the same are true of his own knowledge.

WM. GRIZZARD.

Subscribed and sworn to before me this 31st Jan., 1905.

JOS. C. FINNELL, *Clerk U. S. Courts,*
W. C. BENNETT, *D. C.*

And on the same day, to-wit, on January 31, 1905, the exhibit mentioned in the foregoing petition was filed herein, and was and is as follows, viz:

(Here follows map marked page 6.)

7 And on the same day, to-wit, on January 31, 1905, a certified copy of the foregoing bill of complaint was issued herein as a summons, and was afterwards, to-wit, on February 2, 1905, returned and filed, endorsed as follows, viz:

"Received the within petition at Covington, Kentucky, February 1st, 1905. Executed same by delivering a true copy of same to J. H.

Tinsley, U. S. district attorney, in Covington, Ky., this 1st day of February, 1905.

S. G. SHARP, *U. S. Marshal.*"

Marshal's fees \$2.00.

And on a day following, to-wit, on April 10, 1905, an order was made and entered herein, same being in words and figures as follows, viz:

Order.

This day comes the defendant by its attorney, J. H. Tinsley, and moves the court to grant him till the 1st day of Oct., 1905, to answer herein, for the reason that surveys cannot be made by the United States until during a low stage of water in Kentucky River. The court takes time on said motion till the 1st day of Richmond term of this court.

And on a day following, to-wit, on April 24, 1905, an order was made and entered herein, same being in words and figures as follows, viz:

8

Order.

This cause coming on to be heard, came the defendant by J. H. Tinsley, its attorney, and on his motion time is given until the 1st day of October to file answer herein, and by consent of parties, the court being advised, it is now ordered that this case be, and same is, continued generally until the next regular term of this court.

And on a day following, to-wit, on November 13, 1905, an order was made and entered herein, same being in words and figures as follows, viz:

Order.

This cause coming on to be heard, came the parties by their respective attorneys, and upon their joint motion, the court being advised, it is now ordered that this case be, and same is, continued until the next regular term of this court.

And on a day following, to-wit, on November 12, 1906, an order was made and entered herein, same being in words and figures as follows, viz:

Order.

By consent of parties, the court being advised, it is now ordered that this case be, and same is, continued generally until the next regular term of this court.

9 And on a day following, to-wit, on February 8, 1907, an order was made and entered herein, same being in words and figures as follows, viz:

Order.

This cause coming on to be heard, upon the application and motion of S. Parish for an allowance to him as commissioner appointed by

the court to view the land in controversy in this action, and it appearing to the court that one day was occupied in said service, and that said Parish expended the sum of seventy cents in railroad fare, it is now ordered that he receive in full for his services and expenses herein the sum of five dollars and seventy cents to be taxed as general costs in the case by the clerk.

And on a day following, to-wit, on April 25, 1907, an order was made and entered herein, same being in words and figures as follows, viz:

Order.

This day came defendant by J. H. Tinsley, attorney, and filed its answer herein. Came plaintiff by her attorney and filed reply to defendant's answer.

And on the same day, to-wit, on April 25, 1907, the answer mentioned in the foregoing order was filed herein, same being in words and figures as follows, viz:

10 Circuit Court of the United States, Eastern District of Kentucky.

LUCINDA GRIZZARD ET AL., PLAINTIFFS,	} Answer.
vs.	
UNITED STATES OF AMERICA, DEFENDANT.	

Comes now the attorney for the United States in and for the Eastern District of Kentucky, and for answer to the petition of the plaintiffs, filed herein on Feb. 1st, 1905, says that he has no knowledge or information sufficient to form a belief as to whether the plaintiffs are the legal heirs of Joseph Grizzard, deceased, or as to whether they are the owners or in possession of a tract of land described in the petition, or any part of it, lying on the waters of Tates Creek, near the mouth of said creek. He admits the erection of a lock and dam described in the petition and admits that it raised the water of the Kentucky River 18 feet above its ordinary level and that same caused the waters of Tates Creek to back up and overflow, but he denies that 8-8/10 acres of said land or that any more than 4-62/100 acres of said lands as described in the petition is permanently overflowed by reason of said dam and during the ordinary stage of water therein. He says on information and belief that 3-54/100 acres of said land, so permanently overflowed, is cultivatable and that 1-8/100 acres of said land so overflowed is uncultivatable and unfit for cultivation. He denies, on information and belief, that said land so overflowed is worth \$150.00 per acre or anything near that sum or that \$150.00 per acre was a reasonable value for same before

11 said land was flooded. He denies that the plaintiffs have been damaged by such overflow in the sum of \$1,320.00 or any sum in excess of \$50.00. He denies that 8-8/10 acres of said land

or any more than 4-62/100 acres of same has been rendered wet, boggy, or wholly unfit for agriculture or resident purposes by reason of such overflow.

Wherefore, having fully answered, he prays the court to protect the rights of the United States and to render judgment in favor of the plaintiffs, if they show themselves entitled to the same, for only such sum of money as will compensate them for the reasonable value of the land permanently overflowed by reason of the construction of the said lock and dam. And for all proper relief.

J. H. TINSELY,
U. S. Attorney.

And on the same day, to-wit, on April 25, 1907, the reply mentioned in the foregoing order was filed herein, same being in words and figures as follows, viz:

Circuit Court of the United States, Eastern District of Kentucky.

LUCINDA GRIZZARD ET AL., PLAINTIFFS,	} Reply.
<i>vs.</i>	
UNITED STATES OF AMERICA, DEFENDANT.	

Comes now the plaintiffs in the above styled action, and for 12 reply to so much of the answer filed herein as they are informed or advised is necessary for them to reply to, deny that 1-8/100 acres of said land mentioned and described in the bill or petition herein, or any portion or part thereof, is uncultivable or unfit for cultivation, as charged and alleged in the answer herein.

Wherefore the plaintiffs, having replied as fully as they are advised is necessary for them to do, pray that the answer of the defendant be dismissed; and that they be granted the relief and given the judgment prayed for in their petition herein.

W. S. MOBERLY,
Attorney for the Plaintiffs.

And on a following day, to wit, on April 27, 1907, an order was made and entered herein, same being in words and figures as follows, viz:

Order.

This day came the plaintiff by her attorney and tendered and offered to file an amended petition, to the filing of which defendant by its attorney, J. H. Tinsley, comes and objects. The court overrules said objection and allows said amended petition to be filed, to which ruling defendant excepts.

And on the same day, to wit, on April 27, 1907, the amended petition mentioned in the foregoing order was filed herein, same being in words and figures as follows, viz:

12 Circuit Court of the United States, Eastern District of
Kentucky.

LUCINDA GRIZZARD, &C., PLAINTIFF, <i>vs.</i>	} Amended petition.
UNITED STATES, DEFENDANT.	

Come now the plaintiffs and by leave of the court amend their original petition herein, and say their farm on Tates Creek, in Madison Co., Ky., contains 86 acres; and is shown on plat filed with their petition herein.

They say the county road leading from their road around the house to the Tates Creek Turnpike is a valuable appurtenance to their land; they say that said county road goes through the boundary of land submerged, and the same is thereby totally destroyed by reason of the fact it is covered with water; and they can not use same at any time of the year; they say that the salable value of their said farm is injured and lessened to the extent of \$1,500.00 by reason of the said destruction of said part of said county road.

Wherefore, they pray as in their original petition and for the additional sum of \$1,500.00, and for all other and general relief.

W. S. MOBERLY,
Attorney for Plaintiffs.

14 And on a day following, to wit, on April 30, 1907, an order was made and entered herein, same being in words and figures as follows, viz:

Order.

This day came the defendant and files its demurrer to amended petition of plaintiff heretofore filed herein. The court being advised, overrules said demurrer, to which ruling defendant, by its attorney, comes and excepts. It is agreed that all affirmative allegations of plaintiffs' petition and amended petition be, and same are, traversed of record.

And on the same day, to wit, on April 30, 1907, the demurrer mentioned in the foregoing order was filed herein, same being in words and figures as follows:

United States Circuit Court, Sixth Circuit, and Eastern District of
Kentucky.

LUCINDA GRIZZARD ET AL., PLAINTIFFS, <i>vs.</i>	} Demurrer.
THE UNITED STATES, DEFENDANT.	

Comes now the defendant, The United States, by J. H. Tinsley, U. S. attorney, and demurs to the amended petition filed herein April 27, 1907.

Because the facts stated in said amended petition are not
 15 sufficient to constitute a cause of action against defendant or
 to uphold a recovery by reason of destruction of county road,
 or injury to land by reason thereof.

Wherefore, it prays as in original answer.

J. H. TINSLEY,
U. S. Attorney.

And on the same day, to-wit, on April 30, 1907, an order was made
 and entered herein, same being in words and figures as follows, viz:

Order.

This cause coming on to be heard, came the plaintiff, having as her
 attorney Wm. S. Moberly. Came also the defendant, having as its
 attorney J. H. Tinsley, both sides having announced ready, and the
 cause being heard by the court, came the plaintiff and introduced her
 evidence, and, having announced through, came the defendant and
 introduced its evidence, and plaintiff having no evidence in rebuttal,
 the case is submitted to the court on the law and the facts and both
 sides have leave to file briefs.

And on a day following, to wit, on November 11, 1907, an order
 was made and entered herein, same being in words and figures as
 follows, viz:

Order.

This cause coming on to be heard and having been submitted to the
 court upon the law and the facts, the court having considered same
 and being now advised, files its findings of facts and conclusions of
 law and is of the opinion that submission should be set aside,
 16 and further evidence heard upon the question of the amount of
 plaintiff land actually taken and it is so ordered.

The court is further of the opinion that the matter should be
 referred to a commissioner to inform the court accurately upon this
 point. There being no objections by either plaintiffs or defendant,
 it is ordered by the court that S. Parish and Col. A. M. Campbell be
 and they are appointed to make a proper investigation and report
 same to the court.

And on the same day, to wit, on November 11, 1907, the opinion of
 the court mentioned in the foregoing order was filed herein, same
 being in words and figures as follows, viz:

United States Circuit Court, Eastern District of Kentucky.

LUCINDA GRIZZARD & AL., PLAINTIFFS,	}
<i>vs.</i>	
UNITED STATES OF AMERICA, DEFENDANT.	

It is impossible from any legal proof submitted in this case to
 determine accurately how much land is permanently injured by the

erection of the dam complained. The plaintiffs introduced a plat made by a surveyor named Parish, from which it appeared that on May 13, 1904, eight and eight-tenths acres of plaintiffs' bottom land was submerged by the water as it stood on that date. But it nowhere appears how high the water was on that date, nor as to the
17 likelihood of such a heighth of water recurring every year so as to prevent cultivation. All that appears is that it was then considerably higher than it was last May when the evidence was heard, and that the land had not been cropped since the erection of the dam.

The correctness of the map, and the truth of the facts which it shows, was not established by any one who was in position to speak in regard thereto. The surveyor was not introduced as a witness and none of the witnesses introduced were in position to speak in regard thereto.

On the other hand, Col. Campbell testified that the map did not correspond with plaintiffs' deed—that at the average level of the river, which was two feet nine inches above the top of the dam, the water covered about three acres of the cultivated land, and at a heighth of five feet it would cover three and fifty-four hundredths acres. I hesitate to accept the testimony of Morgan and Col. Campbell on the subject of how much of plaintiffs' land is submerged, for fear that they were not in a position to know exactly what was plaintiffs' land, as no one was along when the government survey was made to indicate what land plaintiffs claimed.

The submission of the case is set aside in order that evidence may be introduced to inform the court accurately on this subject. Perhaps the best way would be to appoint a commission for the purpose. If no objection is made, I would appoint Mr. Parrish and Mr. Morgan, or Col. Campbell.

Another matter in the case needs elucidation. One of the claims asserted in the case is on account of the submerging of the county road, and much is made of this. The case was heard on this branch of it on the assumption that the only way in which plaintiffs could
18 get to Valley View without crossing the water was by going around a distance of three or four miles. Now it appears from the Parrish map that a road is proposed to leave the county road just back of plaintiffs' premises and run east thereof until it strikes the turnpike beyond the point where it crosses the creek, thereby avoiding the obstruction in the county road where it is submerged as it passes through plaintiffs' land. On the hearing of the case no reference was made to this proposed road. It may be that this is entirely possible and the obstruction can be avoided without much or any expense to plaintiffs. The surveyor seems to have been imbued with the idea as to its feasibility, and for some reason no claim was asserted on this account until long after this suit was brought. The assertion thereof seems to have been an afterthought.

This matter should be investigated and the exact truth in regard to it ascertained.

An order will be entered setting aside the submission of this case.

A. M. J. COCHRAN, *Judge*.

Nov. 11, 1907.

And on a day following, to wit, on February 6, 1908, an application and motion was filed herein, same being in words and figures as follows, viz:

19 At the last term of the Federal Court at Richmond, I was appointed commissioner to go with Albert M. Campbell, U. S. assistant engineer, to examine the farm of Lucinda Grizzard at Valley View, Madison County, Ky., to determine the actual area of land submerged or otherwise rendered unfit for cultivation by reason of the backwater caused by the construction of Dam No. 9 on the Kentucky River. We visited the farm on the 27th day of November, 1907, and made a report of same. I paid out 70 cents rail road fare and was engaged one day. Where do I get my pay, and how much am I entitled to? I will be satisfied with whatever you see fit to allow me.

S. PARISH.

Feb. 3, 1908.

And on a day following, to wit, on February 8, 1908, the report of commissioners was filed herein, same being in words and figures as follows, viz:

UNITED STATES ENGINEER OFFICE,

ASSISTANT IN LOCAL CHARGE BIG SANDY RIVER IMPROVEMENT.

Louisa, Ky., November 27, 1907.

The Hon. J. H. TINSLEY,

U. S. Attorney,

Federal Building, Lexington, Ky.

SIR: In accordance with your directions, we, the undersigned commissioners, on November 16, 1907, visited the farm of Lucinda Grizzard et al., on Bates Creek, Madison County, Ky., to determine the actual area of land submerged or otherwise rendered unfit for
20 cultivation by reason of the backwater caused by the construction of Dam No. 9 of the United States improvement of Kentucky River, and also to examine the roads and trails over which the owners of the farm must travel to and from the town of Valley View, their nearest market, post office, and school.

Having made the examination as directed, we have the honor to report as follows:

We agree that seven and one-half (7 1/2) acres of arable land are either permanently submerged or otherwise rendered unfit for cultivation by reason of their liability to being submerged, cut off or soaked by small freshets occurring during the cropping season. We found evidences that this amount of land had been submerged during the cropping season of 1907, when no crops upon it were attempted.

We agree that the greatest damage to the farm lies in the destruction, by backwater, of the ford across Bates Creek on the Forest Hill

road which leads to the Grizzard farm from the Bates Creek pike. It is about 650 feet from a point in the road in front of the Grizzard residence to the Bates Creek pike and the ford was located at about 450 feet from the pike. At present Mr. Grizzard keeps a small boat in which to cross the backwater when the current is not too swift, and there is no ice in the creek. This boat will only carry foot passengers. Mr. Grizzard is compelled to keep his vehicle on the south side of the creek and, when he wishes to use it, take his horse around over a trail by the mouth of the creek and over a lumber company's bridge, in all a distance of between two and three miles around. This trail is also used by his children in going to school when it is unsafe to cross the creek, and by other members of the family in going to
21 and from Valley View by foot. The distance to Valley View by this trail is about a mile and a quarter.

Previous to the construction of the dam the Grizzards were able, at most times, to reach by wagon the nearest point on the Bates Creek pike by traveling about 650 feet on the Forest Hill road. Now, to reach the same point on the pike (which is about one-half mile from Valley View), they have to travel about 3 3/4 miles, as follows:

Up road back of house.....	about ..	3/4 mile.
Along fairly good ridge road.....	" --	3/4 "
Along fairly good creek road.....	" --	1 1/2 "
Along pike.....	" --	3/4 "
		<hr/> 3 3/4 "

The county road back of the Grizzard farm is very steep, rocky, and almost impassable for wagons with any economical load at all; indeed, it is doubtful whether much more than an empty wagon can be taken either up or down the road. When examined this road showed no evidence whatever of travel.

The "proposed road" to the eastward of the Grizzard farm, shown on map filed by claimants in the Grizzard suit for damages, and mentioned in Judge Cochran's opinion, is impracticable owing to the broken country and great cost. It has been examined by the county authorities and reported to be too expensive to consider. We do not think that the county authorities will ever consider the construction of the "proposed road" or the reconstruction of the hill road back of farm because of the great expense attached to either one, and because but two or three families would be accommodated. For the same reasons it will not be economical to construct a bridge over Bates Creek on the Forest Hill road. If Mr. Grizzard continues to market his crop at Valley View or elsewhere, he will have to
22 operate a ferry boat across the backwater in front of his farm.

Very respectfully, your obedient servants,

S. PARISH, *Surveyor*,
ALBERT M. CAMPBELL,
U. S. Assistant Engineer,
Commissioners.

And on the same day, to wit, on February 8, 1908, an order was made and entered herein, same being in words and figures as follows, viz:

Order.

This cause coming on to be heard upon the application and motion of S. Parish for an allowance to him as commissioner appointed by the court to view the land in controversy in this action, and it appearing to the court that one day was occupied in said service and that said Parish expended the sum of seventy cents in railroad fare, it is now ordered that he receive in full for his services and expenses herein the sum of five dollars and seventy cents to be taxed as general costs in the case by the clerk.

And on a day following, to wit, on May 8, 1908, an opinion was filed herein, same being in words and figures as follows, viz:

23 United States Circuit Court, Eastern District of Kentucky.

LUCINDA GRIZZARD ET AL., PLAINTIFFS,

vs.

UNITED STATES, DEFENDANT.

} Opinion.

Upon the evidence heard by me and the report of the commissioners, Parrish and Campbell, I make the following findings of fact herein:

1. That plaintiffs' land contains 86 acres in all, of which 16 acres are bottom land and 70 upper land.

2. That of the bottom land $7\frac{1}{2}$ acres are taken by the construction of Dam No. 9 on Kentucky River.

3. That in addition there is taken an easement of access from plaintiffs' land by way of the county road to the Bates Creek pike.

4. That the whole land was worth \$3,000 before said taking, and what was left after the taking was worth \$1,500.

5. I divide the damage by reason of the taking between the land taken and the easement of access taken equally, i. e., I allow \$750 for the land taken and a like sum of \$750 for the easement of access taken.

I therefore conclude as a matter of law that plaintiffs are entitled to a judgment for \$1,500.

A. M. J. COCHRAN, *Judge.*

May 8, 1908.

24 And on the same day, to wit, on May 8, 1908, an order was made and entered herein, same being in words and figures as follows, viz:

Order.

This cause having been heard and submitted to the court upon the law and the facts, the court having considered same and being now fully advised, files its findings of facts and conclusions of law herein.

Whereupon, it is ordered, adjudged, and decreed that the plaintiffs herein, Lucinda Grizzard, Wm. Grizzard, Mrs. Lila Chaney, and Wilson Chaney, have and recover of the defendant, the United States of America, for the land herein taken, to wit, seven and one-half acres, the sum of seven hundred and fifty (\$750.00) dollars, and the further sum of seven hundred and fifty (\$750.00) dollars for the damage caused by the taking of an easement of access from the plaintiffs' land. Said judgment is to bear legal rate of interest from date. And it is further ordered that the plaintiffs recover of said defendant their costs herein expended, to be taxed by the clerk.

Came the defendant, United States of America, by its attorney, Hon. J. H. Tinsley, and now excepts to the foregoing judgment.
 25 And on a day following, to wit, on August 15, 1908, an order was made and entered herein, same being in words and figures as follows, viz:

Order.

This day came Honorable James H. Tinsley, United States attorney, and files petition for writ of error and assignment of error in this cause, praying this court that a writ of error may issue to the Supreme Court of the United States for the correction of the errors set forth in the said assignment of errors, and that a transcript of the record and proceedings and papers in this cause be made and filed in the Supreme Court of the United States.

The court having fully considered said petition and assignment, and being advised, now orders that same be and it is hereby allowed.

And on the same day, to wit, on August 15, 1908, the petition for writ of error mentioned in the foregoing order was filed herein, same being in words and figures as follows, viz:

26 In the Circuit Court of the United States for the Eastern District of Kentucky, held at Richmond, Kentucky, April term, 1908.

LUCINDA GRIZZARD ET AL., PLAINTIFFS,	} Petition for writ of
vs.	
THE UNITED STATES OF AMERICA, DEFENDANT.	} error.

And now comes J. H. Tinsley, U. S. attorney, for and on behalf of the United States, and says that on or about the 8th day of May, 1908, this court entered judgment herein in favor of the plaintiff and against the defendant, in which judgment, and the proceedings had prior thereto in this cause, certain errors were committed to the prejudice of the defendant, all of which will more in detail appear from the assignment of errors which is filed with this petition.

Wherefore, the defendant prays that a writ of error may issue in this behalf to the Supreme Court of the United States for the correction of the error so complained of, and that a transcript of the record,

proceedings, and papers in this cause, duly authenticated, may be sent to said court.

J. H. TINSLEY, *U. S. Attorney.*

Copy handed me this 19th day of August, 1908.

W. S. MOBERLY,
Attorney for Plaintiff.

Writ of error allowed.

A. M. J. COCHRAN, *District Judge.*

27 And on the same day, to wit, on August 15, 1908, as assignment of errors was filed herein, same being in words and figures as follows, viz:

In the Circuit Court of the United States for the Eastern District of Kentucky, held at Richmond, Ky., April term, 1908.

<p>LUCINDA GRIZZARD ET AL., PLAINTIFFS, <i>vs.</i> THE UNITED STATES OF AMERICA, DEFENDANT.</p>	}	Assignment of errors.
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The defendant, by its attorney, J. H. Tinsley, in this action, in common with its petition for writ of error, makes the following assignment of errors which it avers occurred at the trial:

1. The court erred in allowing the amended petition to be filed of date April 27th, 1907.

2. The court erred in overruling demurrer to amend petition.

3. The court erred in determining that plaintiff's whole land was worth \$3,000.00, and only worth \$1,500.00 after the taking.

4. The court erred in allowing \$750.00 for the easement of access alleged to have been taken.

5. The court erred in rendering judgment against the plaintiff for \$1,500.00.

28 6. The court erred in allowing the plaintiff for anything above the land actually taken and overflowed, to wit, seven and one-half acres under value of \$750.00.

J. H. TINSLEY,
United States Attorney.

Service of copy of the within assignments or error acknowledged before me this 19th day of August, 1908.

W. S. MOBERLY,
Attorney for Plaintiff.

Writ of error allowed.

A. M. J. COCHRAN,
District Judge.

And on the same day, to wit, on August 15, 1908, writ of error was issued herein and service of same acknowledged as shown by the original writ of error attached hereto.

And on the same day, to wit, on August 15, 1908, citation was issued herein, which citation was returned and filed on the 19th day of August, 1908, service acknowledged as shown by the original citation attached hereto.

29

*Writ of error.*UNITED STATES OF AMERICA, *vs.*

The President of the United States to the honorable judges of the Circuit Court of the United States for the Eastern District of Kentucky, greetings:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said court before you, or some of you, between Lucinda Grizzard et al., plaintiff, and the United States, defendant, a manifest error had happened to the great damage of the said United States, defendant, as by its complaint appears, we being willing that error, if any hath been, should be duly corrected and full and speedy justice be done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid with all things concerning the same to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, D. C., on the 15th day of September next, in the said Supreme Court of the United States to be then and there held; that the record and proceedings aforesaid being inspected, the Supreme Court of the United States may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the honorable Melville W. Fuller, Chief Justice of our Supreme Court, 15th day of August, 1908.

JOS. C. FINNELL,
*Clerk Circuit Court of U. S.,
Eastern Dist. of Kentucky.*

Allowed by—

A. M. J. COCHRAN,
Dist. & Acting Circuit Judge.

We acknowledge service of the within writ.

W. S. MOBERLEY,
Atty. for Plaintiff.

(Indorsed:) Lucinda Grizzard et al. vs. The United States. Writ of error. Filed Aug. 15, 1908. Jos. C. Finnell, clerk.

30

Citation.

The President of the United States to Lucinda Grizzard, William Grizzard, and Mrs. Lila Chaney and Wilson Chaney:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States to be holden at Washington, D. C.,

on the 15th day of September next, pursuant to a writ of error filed in the clerk's office of the Circuit Court of the United States for the Sixth Circuit and Eastern District of Kentucky, wherein the United States is plaintiff in error, and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable A. M. J. Cochran, district and acting judge of the Circuit Court of the United States, this 15th day of August, 1908.

A. M. J. COCHRAN,
Dist. and Acting Circuit Judge.

We acknowledge service of the within citation this 19th day of August, 1908.

W. S. MOBERLEY,
Attorney for Plaintiff.

(Indorsed:) Lucinda Grizzard et al., vs. The United States. Citation. Filed August 19, 1908. Jos. C. Finnell, Clerk.

31 And on the same day, to wit, on August 15, 1908, præcipe for record was filed herein, same being in words and figures as follows, viz:

Eastern District of Kentucky, Richmond Division.

LUCINDA GRIZZARD ET AL.	}	No. 44. United States Circuit Court.
<i>vs.</i>		
UNITED STATES.		

To JOSEPH C. FINNELL,
Clerk of said court.

Please make transcript of record, including papers, pleadings, and orders, except the evidence, in the case of Lucinda Grizzard et al. vs. United States, No. 44, for the Supreme Court of the United States.

J. H. TINSLEY,
Attorney for United States.

32 UNITED STATES OF AMERICA,
Eastern District of Kentucky, et.

I, Jos. C. Finnell, clerk of the United States Circuit Court for the Sixth Judicial Circuit and Eastern District of Kentucky, at Richmond, do hereby certify that the foregoing 31 pages contain a complete transcript of the proceedings had in the case of Lucinda Grizzard et al. vs. the United States of America, No. 44, at Richmond, Kentucky, as called for by the præcipe for record filed by J. H. Tinsley, United States attorney, and copied on page 31 of this record, as the same appears from the records and files of this office.

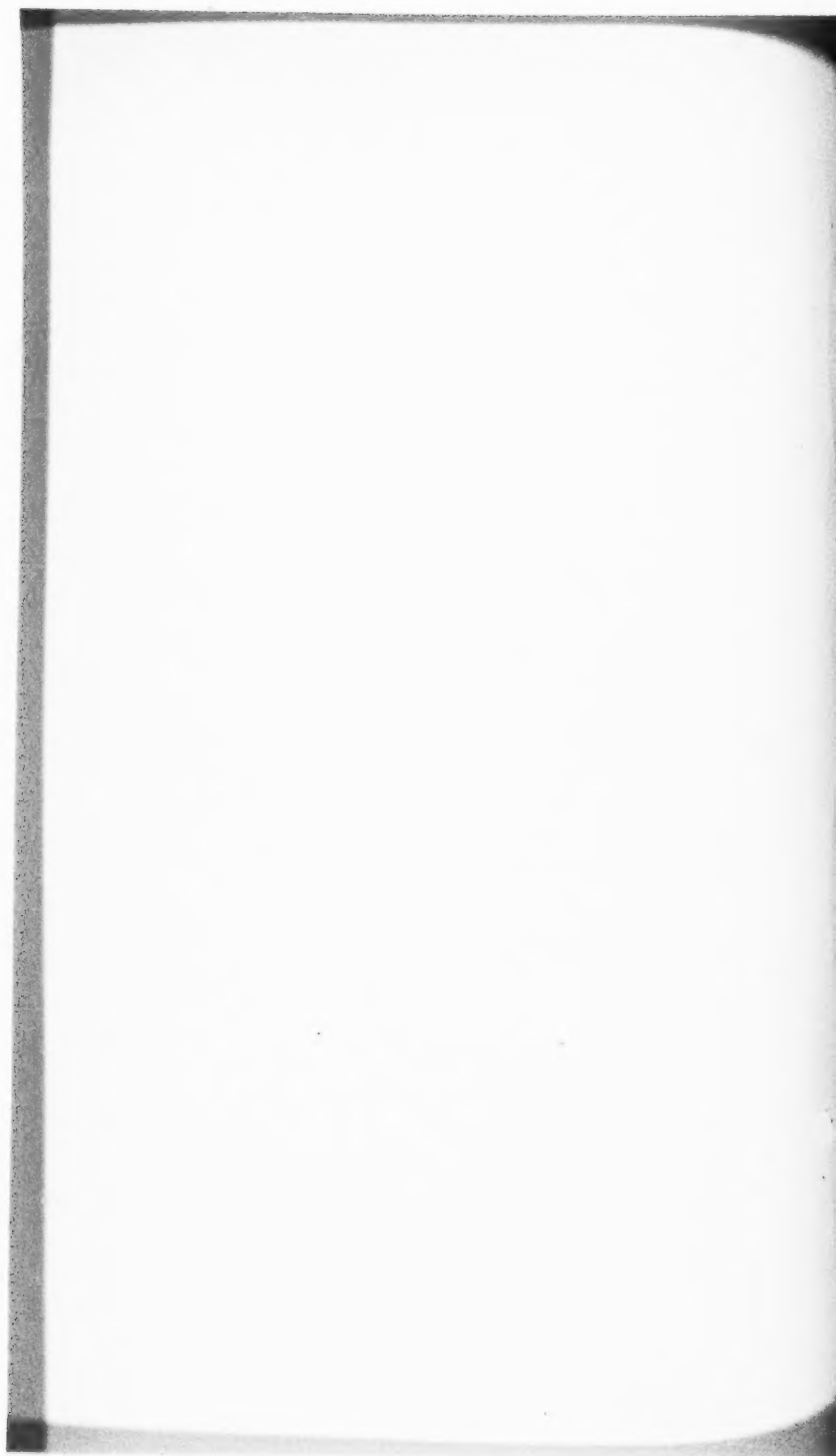
Witness my hand as clerk, and the seal of said court, at Richmond, Kentucky, this 24th day of August, A. D. 1908, and of the Independence of the United States of America the 133rd year.

[SEAL.]

JOS. C. FINNELL, *Clerk.*

33 (Indorsed on cover:) File No. 21330. E. Kentucky, C. C.

U. S. Term No. 252. The United States, plaintiff in error, vs. Lucinda Grizzard, William Grizzard, Mrs. Lila Chaney, and Wilson Chaney. Filed September 12th, 1908. File No. 21330.



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